



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2005

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185

OR2005-02550

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 220531.

The Mesquite Police Department (the "department") received two requests for call sheets and reports from a specified time period regarding two specific addresses.¹ You indicate that some of the responsive information has been released to the requestors. However, you claim that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information other statutes make confidential. You state that some of the submitted information is made confidential by section 261.201 of the Family Code, which provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹ The department received the first request on December 29, 2004 and the second request on February 10, 2005.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We agree that the information you have marked consists of reports, records, or working papers used or developed in an investigation made under chapter 261 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information you have marked is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must withhold this information under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses section 58.007 of the Family Code. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that some of the reports involve allegations of delinquent conduct and conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* §§ 51.02(2) (providing that in title 3 of Family Code, "child" means person who is ten years of age or older and under seventeen

years of age), 51.03 (defining "delinquent conduct" and "conduct indicating a need for supervision"). Thus, the reports we have marked are subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, these reports are confidential in their entireties in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. However, you do not demonstrate, nor does it appear from our review, that incident report number 041005113504 alleges that a juvenile violated a penal statute or otherwise engaged in delinquent conduct or conduct indicating a need for supervision. *See id.* § 51.03. Thus, this information is not confidential under section 58.007 and may not be withheld under section 552.101 on that basis.

Next, you assert that portions of the remaining submitted information, which you have marked, are confidential pursuant to section 772.118 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Section 772.118 applies only to emergency 9-1-1 districts established in accordance with chapter 772. *See Open Records Decision No. 649 (1996)*. This statute makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a service supplier. *See id.* at 2. You state that the City of Mesquite is part of an emergency communication district that was established under section 772.118.² Based on this assertion, we conclude that the originating telephone numbers and addresses that you have marked are confidential under section 772.118 and, thus, must be withheld pursuant to section 552.101 of the Government Code.³

Further, we agree that a portion of the remaining submitted information must be withheld under section 552.101 in conjunction with the common-law right of privacy. The doctrine of common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see Open Records Decision Nos. 600 (1992), 545 (1990)*, some kinds of medical information or information indicating

² Section 772.118 applies to an emergency communication district for a county with a population of more than two million.

³ Because we reach this conclusion, we do not address your argument that this information is also confidential under section 771.061(a) of the Health and Safety Code.

disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical disabilities). The department must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy.

Finally, you claim that some of the remaining submitted information is subject to section 552.130 of the Government Code, which excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the motor vehicle information you have marked pursuant to section 552.130.

In summary, the department must withhold the following information pursuant to section 552.101: (1) the marked information in conjunction with section 261.201; (2) the information we have marked in conjunction with section 58.007 of the Family Code; (3) the marked information in conjunction with section 772.118 of the Health and Safety Code; and (4) the information we have marked in conjunction with common-law privacy. The marked motor vehicle information must also be withheld pursuant to section 552.130. The remaining information must be released to the requestors.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 220531

Enc. Submitted documents

c: Mr. Frederick Beltran
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(w/o enclosures)

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